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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,185	03/28/2002	Wayne J. Myer	70254-346	4762
20915	7590	10/14/2004	EXAMINER	
MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503			LUK, EMMANUEL S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/063,185	MYER ET AL.
Examiner	<b>Art Unit</b>	
Emmanuel S. Luk	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 September 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-64 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-64 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9, 12-14, 16-22, 25-31, 34-40, 43-50, 53-60, 63 and 64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite since it is unclear of the range in line speeds for determining the gap. The claims are not definite for one skilled in the art to determine what the subject matter is claimed, in this case the line speed since it is necessary to determine the gap which is also not specified.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckwith (5622732).

Beckwith teaches an extruder (19) having an inlet (26) to receive the extrudate, an extrusion die having an annular die opening (16) forming an outlet, a choke ring (12) having an opening defined by an annular choke ring surface, the choke ring positioned relative to the extruder such that the annular die opening is received within the ring opening, the choke ring opening being concentric about the longitudinal axis and positioned therefrom a second radial distance (Fig. 1), the difference between the second radial distance and first radial distance comprise a gap, Beckwith teaches a gap of 0.01 to 0.03 inches, or 0.254 to 0.762 mm. The choke ring of Beckwith is the same piece as the outer die lip. The inner portion (14) of the die ring forming the first radial distance from the longitudinal axis and the portion (12) formed by the choke ring/outer die lip forms the second radial distance from the longitudinal axis.

Beckwith fails to teach the line speed and ratio ranges.

The size of the gap taught by the invention is based upon the equation as specified in the equation in relation to the ratio ranges and line speed. The line speed of the specification is based upon 50 to 300 millimeters/second as specified in the specification. Inputting the range for the line speed into the equation as provided by the applicants allows for a gap size of 0.15 to 5 mm. Beckwith teaches a range of 0.254 to 0.762 mm, which is within the range. Additionally, applicant's dependent claims 2-4, 14,

18-20, 26, 27, 35, 36, 44-46 and 54-56, have claim a gap that is within the range of the gap in Beckwith.

It would have been obvious to modify Beckwith with the line speed and ratio ranges

### ***Response to Arguments***

6. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
  
7. Applicant's arguments with respect to claims 1-64 have been considered but are moot in view of the new ground(s) of rejection. The applicants argued that the final rejection is not proper and Examiner agrees. The finality has been withdrawn. However, in regards to the applicant's arguments concerning the method limitations in the apparatus claims, Examiner has applied the limitations that have been provided in the specification by the applicants to determine the gap range that is claimed in the claimed invention. The line speed specified in the specification is 50 to 300 mm/sec and the equations has been used to find the gap range, this has been calculated to be 0.15 to 5 mm. Beckwith teaches a gap range of 0.254 to 0.762 mm, this is within the claimed range. The claimed gap ranges have been of a certain size and smaller, this includes the prior art's disclosed gap range.

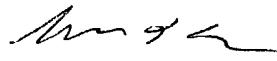
***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 7 to 4 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on (571) 272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EL

  
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